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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/613,770

07/02/2003

Todd McNulty

Bench

7153

23217

7590

04/10/2008

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EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

MAIL DATE

DELIVERY MODE

04/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/613,770	Applicant(s) MCNULTY ET AL.	
	Examiner ANDREA M. VALENTI	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-14,16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-14, 16, 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 8, 9, 10,14 rejected under 35 U.S.C. 102(b) as being anticipated by English translation of German Patent DE 20001566U to Lanz.

Regarding Claims 1, 8, and 14, Lanz teaches a self watering system and method for plant displays, wherein said system comprises a display support structure having downwardly extending legs (Lanz Fig. 4 #13); a top (Lanz Fig. 4 #1) on said display support structure; said top having side panels and a bottom having a water tight connection (Lanz English translation page 5 line7); a reservoir (Lanz Fig. 1 #5) with a plurality of perforations placed in said top between said side panels; said reservoir capable of supporting plants without submersing said plants in Water (Lanz Fig. 3 #11); and a capillary mat placed on top of said reservoir (Lanz #2 and 3; English translation page 5 line 20-21) without being substantially submersed in the water for wicking water uniformly from the reservoir (Lanz English Translation page 5 line 17); a self watering system for plant displays with a water supply (Lanz #14 and English translation page 6 last paragraph); said reservoir includes a plurality of perforations forming a honeycomb material for containing water (Lanz Fig. 1 #5).

Regarding Claims 3 and 9, Lanz teaches said reservoir includes: a thickness sufficient to prevent said capillary mat from being substantially submersed in the water (Lanz #2 and 3; applicant has not claimed a specific thickness numerical dimension range and Lanz Fig. 1 and 3 shows that the capillary mat is not in direct contact with water).

Regarding Claims 4 and 10, Lanz teaches wherein said capillary mat includes: a material for the plants to sit upon while wicking water from said reservoir to the root structure of the plants (Lanz #2).

Claims 5, 11, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over English translation of German Patent DE 20001566U in view of U.S. Patent No. 4,428,151 to Solomon.

Regarding Claims 5, 11 and 17, Lanz teaches said capillary mat includes: a material formed from a barrier fabric for the plants to sit upon while wicking water from said reservoir to the root structure of the plants (Lanz #2 and 3; English translation page 5 line13-14). Lanz is silent on the capillary mat is explicitly a woven barrier fabric. However, Solomon teaches a capillary mat of woven fabric (Solomon Col. 2 line 40-43). It would have been obvious to one of ordinary skill in the art to modify the teachings of Lanz with the teachings of Solomon at the time of the invention to make it more wear resistant as taught by Solomon. The modification is merely the simple substitution of one known element for another to obtain predictable results.

Claims 6, 12, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over English translation of German Patent DE 20001566U to Lanz in view of U.S. Patent No. 5,209,015 to Filippi.

Regarding Claim 6, 12 and 16, Lanz teaches wherein said water supply includes: at least one water supply pipe extending along one side of said top, but is silent on it having a series of spaced perforations for providing water evenly to said reservoir. However, Filippi teaches a water supply with a series of spaced perforation (Filippi Fig. 4 #19). It would have been obvious to one of ordinary skill in the art to modify the teachings of Lanz with the teachings of Filippi at the time of the invention since the modification is merely an engineering design choice involving the selection of a known alternate equivalent irrigation means selected to prevent root rot and to promote healthy plant development and for a more comprehensive distribution of water to a larger area of plants. The modification is merely the application of a known technique to a known device ready for improvement to yield predictable results.

Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent DE 20001566U to Lanz in view of United Kingdom Patent GB 2018117 A to Marrison.

Regarding Claim 7 and 13, Lanz is silent on wherein said system includes: at least one stand pipe *for allowing said top to drain to prevent overfilling* (functional language structure must merely be capable of performing this function). However, Marrison teaches a stand pipe in a self watering plant display system (Marrison #12). It would

have been obvious to one of ordinary skill in the art to modify the teachings of Lanz with the teachings of Marrison at the time of the invention for ergonomic ease of adding a specific concentration of nutrients and fertilizer to the system. The modification is merely the application of a known technique to a known device ready for improvement to yield predictable results.

Response to Arguments

Applicant's arguments filed 16 January 2008 have been fully considered but they are not persuasive.

Applicant argues that Lanz does not disclose a capillary mat that wicks water from the reservoir to the plants uniformly. Examiner disagrees and maintains that Lanz does in fact teach this limitation. Lanz's mat (Lanz #2 and #3) wicks water and uniformly distributes the water (***Lanz English translation page 5 line 17-18 and 20-21***). Even though the water is wicked with the help of rock wool cubes (Lanz #7) the mat of Lanz still satisfies the claim limitation. The rock wool cubes are uniformly dispersed through the reservoir and the mat uniformly draws water from the reservoir via the rock wool cubes and supplies water for absorption by the plants. The examiner disagrees with applicant's argument that the Lanz reference teaches away from Applicant's invention. The combination of Lanz's elements #2 and #3 function as a capillary mat that transfers water from a reservoir to a plant. Elements #2 and 3 of Lanz are performing a wicking action. Applicant does not claim that the multi-port board has to allow water to freely communicate between perforations. Neither Lanz #2, 3, or #7 are "substantially" immersed

Examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art of record.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREA M. VALENTI whose telephone number is (571)272-6895. The examiner can normally be reached on 6:00am-4:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrea M. Valenti/
Primary Examiner, Art Unit 3643

08 April 2008